Rules of the Senate : 1991 amendments

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THE RULES OF THE SENATE: 1991 AMENDMENTS

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INTRODUCTION

On 4 June 1991, members of the Progressive Conservative Party in the Senate proposed an extensive package of amendments to the Rules of the Senate. These proposals were subsequently considered by the Standing Senate Committee on Standing Rules and Orders, although Liberal Senators did not participate in these deliberations. The Committee's report, which was tabled in the Senate on 11 June 1991, recommended the adoption of substantially all of the amendments. The Senate adopted the report on 18 June 1991, thereby approving major changes to its Rules. The amendments came into effect on 19 June 1991.

These amendments constitute the most extensive overhaul and revision of the Rules of the Senate since 1906. The Rules of the Senate have remained essentially unchanged since they were introduced in that year, although various minor changes have been made over the years. The Upper Chamber has traditionally operated on a "gentlemanly" basis, with the Rules being resorted to only rarely. F.A. Kunz, in his book *The Modern Senate of Canada,* noted that "the rules of procedure in the Senate are characterized by a high degree of flexibility. Although the Rules of the Senate contain some 152 rules, made up of an original body adopted in 1906 and of subsequent changes and amendments, ... they are not adhered to with any degree of rigidity and a considerable portion of the Senate's business is in fact conducted under suspended rules."

Recent events -- especially the acrimonious 1990 debate over the Goods and Services Tax (the GST) -- resulted in considerable dissatisfaction with the existing Rules, and a desire for change. This was most prevalent on the government side, but other Senators and observers also agreed that the Rules of the Senate needed to be reviewed and revised.

In the House of Commons, substantial changes to the Standing Orders have been made at periodic intervals. Procedural rules are not static; they need to be updated and adapted in response to changing circumstances, the pressure of a modern legislative agenda, and so forth.

Many of the new amendments to the Rules of the Senate are of a housekeeping or administrative nature. Some of them are relatively straight-forward, and non-controversial -- for instance, those which reflect practices that have developed in the Senate. A number of other changes have been modelled closely on the Standing Orders of the House of Commons. Other amendments, however, are more controversial, and carry important and far-reaching implications.

This paper will review and briefly discuss the amendments. It will explain what the new Rules are, and attempt to set them in context. The amendments will be addressed in the order in which they appear in the Rules.

UNPROVIDED CASES

The revised Rule 1 of the Rules of the Senate states that in all cases not provided for in the Rules, "the customs, usages, forms and proceedings of either House of the Parliament of Canada shall, *mutatis mutandis,* be followed in the Senate or in any committee thereof." This wording is similar to that of the former Rule 1. A new clause has been added: Rule 1(2) provides:

> The Rules of the Senate shall in all cases be interpreted as having priority over any practice, custom or usage described in any of the appendices to the Rules. Any conflict between the appendices and the Rules shall be resolved by reference to the Rules alone.

This new clause is designed to clarify the pre-eminence of the Rules. The practices, customs and usages in the appendices are intended to assist in the interpretation of the Rules, not to overrule or modify the specific wording used. It may be useful or even necessary to refer to the appendices, but ultimately it is the wording of the Rules themselves that

must govern; otherwise, the purpose of adopting procedural rules or standing orders would be defeated. It is not known if this has been a problem in the Senate in the past, or whether this new provision has been added out of an abundance of caution. There is nothing comparable to Rule 1(2) in the Standing Orders of the House of Commons.

INTERPRETATION

A number of new terms have been added to the definitions in Rule 4. These are: "Leader of the Opposition," "intermediate proceeding," "meeting of the Senate," "person authorized to be on the floor of the Senate Chamber while the Senate is sitting," "ordinary daily hour of adjournment," and "sitting of the Senate." A number of these additions are consequential to other amendments. Others appear to have been inserted to remove any ambiguity, or because of an oversight in earlier versions: for instance, "Leader of the Opposition" was not defined in the old Rules, although "Government Leader in the Senate" and "Deputy Leader of the Opposition in the Senate" were.

SITTING TIMES FOR THE SENATE

The new Rule 5 provides for the sitting times for the Senate. Accordingly, it replaces the old Rule 7, which merely stated that unless otherwise ordered, the Senate began its sittings at 2:00 p.m. The main change is the addition of an earlier meeting time for Fridays: 9:00 a.m. The House of Commons meets earlier on Fridays than on other days, thereby enabling the proceedings to finish earlier so that Members may get away for the weekend. Traditionally, the practice of the Senate has been not to sit on Mondays or Fridays except in exceptional circumstances. This new Rule does not require the Senate to sit on Friday, but rather ensures that if it does, it will begin and finish earlier.

Rule 5 goes on to provide for the ringing of bells for up to 15 minutes prior to the commencement of a sitting, the entry of the Speaker

at the stated times, and proceeding with prayers as soon as a quorum is present. These provisions are new, and there do not appear to be any comparable provisions in the Standing Orders of the House of Commons, although, as a practical matter, the House does provide a short "reminder bell" prior to each sitting. Fifteen minutes is a maximum, not a minimum, and it is hard to imagine cases where such a long period would be required. The new definition of "sitting of the Senate" in Rule 4(24) means that the Senate is not considered to be sitting until after the Speaker has read the prayers.

DAILY HOUR OF ADJOURNMENT

A new provision has been added by Rule 6 whereby the Senate will adjourn at midnight (4:00 p.m. Fridays) if it is still sitting at that hour.

Most legislative bodies make specific provision for a time of adjournment. Until this change was made, however, the Rules of the Senate made no such provision. Although it is rare for the Senate to have lengthy sittings, there were several non-stop, continuous sittings over the GST. The new Senate Rule is specifically made subject to the other provisions in the Rules (such as time allocation) or "as previously ordered by the Senate."

Where a "deferred standing vote" has been scheduled for 5:30 p.m. (pursuant to Rule 68), Rule 7 provides that the Senate cannot adjourn until after the vote has been taken. The sitting, however, can be suspended so long as the bells start ringing at 5:15 p.m.

QUORUM

Section 35 of the *Constitution Act, 1867,* provides that the quorum for the Senate is 15 Senators, including the Speaker. Under the old Rules of the Senate, the Speaker was required to adjourn the Senate if there was less than a quorum present after summoning the Senators who "may

be in the adjoining rooms." Under the new Rule 9, the quorum remains at 15 Senators, including the Speaker. The amendments require, however, that in addition to summoning the Senators who may be in the adjoining rooms, bells to call in the Senators must be sounded for not more than 15 minutes. This is presumably intended to enable Senators who are in their offices or elsewhere to get to the chamber. In addition to providing a mechanism for the Speaker to adjourn the Senate, the purpose is presumably to prevent unnecessary disruption of sittings and of the business of the Senate. It appears that the time for ringing the bells is discretionary: 15 minutes is a maximum, but they could be rung for a shorter period; thus, as soon as a quorum is present, the bells could be turned off. If no quorum is present at the end of 15 minutes, the Speaker is required to adjourn the Senate to the next sitting day.

The House of Commons deals with similar matters in its Standing Order 29. Under this provision, the Speaker may adjourn the House if no quorum is present at the time of meeting, and, during a sitting, shall adjourn the House if no quorum is present after the bells have been rung for 15 minutes.

Ordinarily, when a chamber is adjourned for want of a quorum, the business before it is dropped. The new Senate Rule 9(4) provides that the item of business under consideration when the Speaker adjourns the House for want of a quorum shall be placed on the Order of the Day for consideration at the next sitting of the Senate (unless it is an emergency debate). Under the old Senate practice, this item of business would have been dropped from the Order Paper. The House of Commons adopted a new Standing Order 41(2) on 11 April 1991 whereby if debate on any Order of the Day is interrupted by the House's adjournment by motion or for want of quorum, such motion or order shall be allowed to stand and retain its precedence on the Order Paper for the next sitting. New Senate Rule 9(4) seems to be somewhat broader -- it applies to any item of business -- although it only arises if the Senate is adjourned for want of a quorum. This provision clearly assists the government with planning, but also removes some of the incentive for ensuring that a quorum is always present.

DINNER HOUR INTERRUPTION

Rule 13 provides for a dinner hour break from 6:00 p.m. to 8:00 p.m. if the Senate is then sitting, provided that if a standing vote has been ordered, it must be completed first. The Rule is essentially the same as the old Rule.

ADJOURNMENT MOTIONS

The new Rule 15 provides that a motion to adjourn the Senate, unless otherwise prohibited in the Rules or otherwise ordered by the Senate, shall always be in order. This is similar to House of Commons Standing Order 60. As noted by various authorities on parliamentary procedure, it is always necessary that a chamber be able to adjourn itself. No such Rule previously existed in the Senate, although it is standard parliamentary practice. As noted in the Rule, there are certain other Rules of the Senate which specifically prohibit motions to adjourn during certain proceedings.

Rule 15 also provides that a motion to adjourn can only be moved when the Senator moving the motion has the floor to speak on a question before the Senate, and not on a point of order; that the question on a motion to adjourn is to be put by the Speaker forthwith without debate or amendment; that no standing vote on a motion to adjourn can be deferred; and that no second motion to adjourn shall be receivable until some "intermediate proceeding" has taken place. ("Intermediate proceeding" -- which is new in the interpretation section -- means any item that would be recorded in the *Journals of the Senate;* this meaning is consistent with that used in the British and Canadian Houses.) A standing vote could be requested, in which case a 60-minute bell would apply.

These rules and conditions are similar to those imposed in the Canadian House of Commons. They derive in large part from the practice and traditions of the British House of Commons. It should be noted, however, that the Speaker of the British House has discretion as to

whether to accept a motion to adjourn, and that such motions are debatable, although not capable of being amended, under British practice.

Motions to adjourn are often referred to and used as "dilatory motions," whose purpose is to postpone or delay consideration of a question. They are "superseding" motions, in that they take priority over and interrupt the business that is before the House. Notice is not required.

POSTPONEMENT OF SITTINGS

The new Rule 17(1), which is similar to the old Rule 14A(1), allows the Speaker to call the Senate back during any adjournment. A new subsection (2) has been added to deal with the situation where the Speaker is satisfied that the public interest does not require the Senate to meet at the time provided in the order of adjournment: the Speaker is directed to "consult" with the Leader of the Government and the Leader of the Opposition and to determine an "appropriate date" for the next sitting of the Senate.

In the Commons, recall of the House is provided for in Standing Order 28(3). It allows the Speaker to bring the House back early if satisfied "after consultation with the Government, that the public interest requires it." No reference is made in the Standing Orders to delaying the scheduled return of the House.

Notices of a recall or postponement of sittings of the Senate are to be sent to each Senator at his or her address filed with the Clerk of the Senate. It is not clear what method of "sending" is envisaged: the term implies -- or, at least, allows -- ordinary mailing, whereas it might be preferable that a more expeditious (and reliable) means of communication, such as telegrams (as in the House of Commons), faxes, and so forth, be used. Rule 17(3) states that non-delivery of the notices does not affect their validity -- this is similar to the provision in old Rule 14A(2), and to clauses commonly found in corporate bylaws and other documents. Rule 17(4) allows the Clerk of the Senate to act for the

purposes of this Rule in the absence of the Speaker, or when the office of the Speaker is vacant.

ROLE OF THE SPEAKER

Rule 18 replaces the existing Rule 15. Under Rule 18(1), it is specifically provided that it is not necessary for breaches of order and decorum to be drawn to the attention of the Speaker before he or she intervenes. Moreover, the Speaker can act on his or her own initiative "to interrupt any debate to restore order or to enforce the Rules of the Senate." In addition, the Rule provides that the Speaker may suspend the sitting of the Senate for not more than three hours "in the case of grave disorder."

Rule 18(2) provides that the Speaker shall decide points of order, stating the reasons for the decision and any authorities. (A reference to the "practices" of the Senate in the old Rule has been removed.) Rule 18(3) empowers the Speaker to "determine when sufficient argument has been adduced to decide the matter." All decisions of the Speaker remain subject to appeal to the Senate, such an appeal to be decided forthwith, without debate (Rule 18(4)). Appeals of Speaker's rulings are subject to the 60-minute bell provision in Rule 67(1). Rule 18(5) repeats the provision, previously found in Rule 15, that when the Speaker rises all other Senators shall remain seated or resume their seats.

The changes in Rule 18 are important and, arguably, could have far-reaching implications. They are basically intended to enhance the role of the Speaker as the presiding officer of the Senate, and his or her ability to ensure that sittings are conducted in an orderly fashion. To some extent, the changes codify already existing practice or clarify certain ambiguities; in other respects, however, the new wording of the Rule represents a departure from the traditions of the Senate, and fundamentally alters the office of Speaker of the Senate.

When the Senate was established by the *Constitution Act, 1867,* it was an amalgam of the British House of Commons and House of Lords. The office of Speaker of the Senate was patterned closely on the

office of the Lord Chancellor, who is the Speaker *ex officio* of the House of Lords. The Senate Speakership, thus, derives from a fundamentally different tradition from that of the Speakership of the House of Commons. One author, Robert A. Mackay, has written, "[T]he Speaker of the Senate is in reality but a chairman or presiding senator...." The Speaker was seen as the equal of other Senators, with no greater powers or authority.

Pursuant to section 34 of the *Constitution Act, 1867,* the Speaker of the Senate is appointed, and can be removed, by the Governor General. In practice, this means that the government has complete control of the appointment, which does not require any vote or formal approval of the Senate. This is in marked contrast with the situation in the House of Commons, where the Speaker is elected under the terms of the *Constitution Act, 1867,* and where recent reforms and the introduction of a secret ballot have further strengthened the independence of the office.

The Speaker of the Senate is not given any specific powers or responsibilities by the Constitution, not even the simple one of presiding over the Senate. This is also to be contrasted with the case for the Speaker of the House of Commons, who is specifically made the presiding officer of that chamber. It should be noted, however, that section 18 of the *Constitution Act, 1867,* granted the Senators and the Senate the same privileges, immunities, and powers as the British House of Commons, rather than the British House of Lords. This implies that the privileges, and powers of the office of Speaker of the Senate are those of the Speaker of the British House of Commons, not those of the Lord Chancellor.

Professor W.F. Dawson has observed that "the provisions of the law do not give any clear picture of the office of Speaker of the Canadian Senate. The *British North America Act* of 1867 established in Canada a pale reflection of the House of Lords and copied even more vaguely the office of Lord Chancellor." The differences between the Lord Chancellor and the Senate Speaker have widened over the years. This has been fairly gradual, but the result is that the Senate Speaker has moved away from the Lord Chancellor model, and closer to the role of the Speaker of the House of Commons. This has been accomplished by various changes in practice and developments of traditions, as well as certain rule changes.

The Senate has always prided itself on being self-governing and on the equality of all its members. Until 1906 it was very conscious of the House of Lords tradition whereby the Lord Chancellor intervened in debate to rule on a procedural question only at the request of another Hon. Member. The Speaker, like the Lord Chancellor, had no more authority than any other member except insofar as his own personal weight and the dignity of his office might give effect to his opinions and secure the concurrence of the House.

In 1906 the Rules of the Senate were amended to empower the Speaker to preserve order and decorum during debate. The wording of the precursor to the new Rule 18 was identical to, and was presumably based on, Standing Order 10 of the House of Commons and, as such, placed the Speaker in much the same position as his or her Commons counterpart. It seems, however, that the granting of new powers to the Speaker of the Senate did not have any immediate or dramatic effect on the proceedings of the Senate. According to Professor Dawson, in practice, this new rule made very little difference in Senate procedure and does not seem to have been well understood by Senators. The very next year one Senator questioned the right of the Speaker to intervene to maintain order and as late as 1934 the Speaker himself stated that he must have his attention called to a breach of the rules before he could do anything.

The Speaker of the Senate has seldom had to exercise fully the powers and duties given to the office by the Rules; Speakers have rarely had to intervene in proceedings to control debate or to call a Senator to order. In some respects, even under the old Rules of the Senate, the Speaker possessed considerably more authority than the office was by custom and convention credited with. At the same time, for constitutional, legal, historical and other reasons, the Speaker of the Senate has a different, and much lesser function, than the Speaker of the House of Commons.

There seems to be no doubt that the Speaker of the Senate had the power and the duty under the old Rule 15 to intervene in debate to preserve order and decorum. He or she was not required to wait until another Senator drew attention to a point of order. The re-drafted Rule 18 would clarify and enhance the right of the Speaker to maintain order and

decorum. Arguably, therefore, it represents not a radical departure from the existing practice, but rather a continued evolution towards a more powerful role. The changes in Rule 18, coupled with a number of the other amendments, however, could fundamentally change the nature of the office, and its relationship to the Senate as a whole.

The provision in Rule 18(3) that the Speaker shall determine when sufficient argument has been adduced could prove contentious if Speakers do not apply it wisely. Obviously, procedural arguments can become repetitive and unnecessary, and there comes a point at which it is reasonable to cut off debate. The House of Commons does not have any comparable provision in its Standing Orders; such a power is implicit in the role of the Speaker of the Commons. It may also be implicit in the case of the Senate Speaker, but, given the different tradition of the office, the inclusion of a specific clause may be advisable.

It is also important to remember that the rulings of the Speaker remain subject to appeal to the full Senate, and, hence, can be overturned. (It is possible that a Speaker's decision to terminate argument under Rule 18(3) could be appealed.) The House of Commons discontinued appeals of Speakers' ruling in 1965, thereby enhancing the independence of the office of Speaker, but the different traditions and origins of the role of the Speaker of the Senate probably require the continuance of such appeals.

DECORUM

Rule 19(1) is a re-draft of the old Rule 16(a): no Senator or other person authorized to be on the floor of the Senate shall pass between the Chair and the Table nor between a Senator who has the floor and the Chair. This is designed to ensure that no one will obscure the Speaker's view. Rule 19(2) repeats old Rule 16(b), to the effect that when entering, leaving or crossing the Senate Chamber, Senators shall bow to the Chair. It adds that the reason for bowing is that the Speaker is the "symbol of the authority of the Senate."

The old Rule 16(c) has been replaced and re-worded as Rule 19(3): if Senators wish to have private conversations in the Senate Chamber, they shall go below the Bar, or the Speaker will order them to do so. Two new provisions have been added to deal with modern technology: Rule 19(4) provides that no electronic devices which produce sound are allowed in the Senate Chamber, except (pursuant to Rule 19(5)) hearing aids. Thus, cellular telephones, portable fax machines, radios, pagers, and so forth are prohibited. The addition of the section on electronic devices is probably a good precaution and in keeping with the dignity of the Senate.

STRANGERS

Rule 20 basically repeats the provisions of the old Rule 17. It provides a mechanism for the removal of "strangers" from the Senate. This matter is dealt with similarly by House of Commons Standing Order 14, and by comparable provisions in most other parliamentary chambers. Rule 20(3) is new: it provides that when the Senate orders the withdrawal of strangers, the galleries are to be cleared, but those authorized to enter the Senate Chamber and to be on the floor of the Senate are to continue to have free access. It should be noted that the phrase "person authorized to be on the floor of the Senate Chamber while the Senate is sitting" has been added and defined in Rule 4, although these precise words are not used in Rule 20(3).

SENATORS' STATEMENTS

Rule 22 introduces a new item of business to be known as "Senators' Statements," which will immediately follow the daily prayers, unless there are motions for emergency debates to be heard. It is designed to enable Senators to raise, without notice, matters that they "consider need to be brought to the urgent attention of the Senate." It is provided that statements should relate to matters which are of public consequence,

and for which the Rules and practices of the Senate do not provide any other immediate means of raising. Senators are not to anticipate Orders of the Day, or to engage in debate. Statements shall be limited to three minutes, although a Senator may seek leave to extend his or her remarks, and leave is to be granted unless more than ten Senators object. According to Rule 23(6), the time for "Senators' Statements" will be 15 minutes, but provision is made in Rule 22(8) for an extension of the time for "Senators' Statements" for up to 30 minutes, at the request of either Whip, with the time to be added at the end of the afternoon. No standing votes apply to Senators' Statements.

"Senators' Statements" appears to be similar to "Statements by Members" in the House of Commons, which since 1982 have allowed Members who are not cabinet ministers to speak for up to one minute on virtually any matter of national, provincial or local concern during the 15-minute period that precedes Question Period. In the House, the Speaker retains discretion over the acceptability of each statement: personal attacks, congratulatory messages, poetry and clearly frivolous statements have been ruled out of order. The original Standing Order allowed each Member's statement to be 90 seconds, but this was reduced to 60 seconds in 1986, in part to allow more Members an opportunity to participate. The time limits are generally strictly enforced, with some statements being cut off in mid-sentence.

Opportunities have always existed in the Senate for such statements and tributes, but the provision of a special part of each sitting should prove more efficient and allow greater planning by the Senate and Senators. It is possible that after some experience with the new Rule, changes will be made, such as a shortening of the amount of time to be allowed each Senator.

DAILY ROUTINE OF BUSINESS

Rule 23 provides that no questions of privilege or points of order can be raised during the Daily Routine of Business and Question Period. This is consistent with the practice in the Senate; House of

Commons Standing Order 47 is to similar (though not identical) effect.

Rule 23(1) also directs that any question or point of order can only be raised at the time the Order to which it relates is first called for consideration by the Senate. Thus, questions of privilege or points of order which Senators wish to raise in relation to a bill, for example, would have to be raised when second reading is called for consideration.

Rule 23(2) provides that the introduction and first reading of Government, Public and Private Bills are "*pro forma* stages of consideration," and shall be decided without debate or standing votes. This has been described as a codification of existing Senate practice. It is important to note, however, that while the introduction and first reading are usually formalities, there are times when, for various reasons, a standing vote may be requested. Under the old Rules, this would seem to have been permitted. Generally, it is the Opposition which calls for such votes, often as a delaying tactic, but there are circumstances in which the government may also desire a recorded vote. This new Rule, therefore, constitutes the removal of a right that used to exist, even if it was not much exercised. It should be noted that the April 1991 amendments to the Standing Orders of the House of Commons instituted a similar rule in that chamber.

Rule 23(3) provides that any standing vote requested during the consideration of the Daily Routine of Business shall stand deferred until 5:30 p.m. that day. Votes on dilatory or procedural motions cannot be deferred.

Reference is made in Rule 23(4) to dilatory or procedural motions, but these terms are not defined. Among the types of motions that are commonly considered as such are: motions that the House (or the debate) adjourn, motions to proceed to Orders of the Day or to the next order of business, the previous question, and "hoist" motions, whereby consideration of a matter is deferred for a period of, say, six months. House of Commons Standing Order 58 designates such motions as "privileged," thereby emphasizing their superseding status.

Rule 23 is designed to ensure that the business of the Senate is not delayed or interrupted unduly. Rule 23(5) ensures that the

Senate reaches Orders of the Day during each sitting -- at 8:00 p.m., if not earlier. As noted above, the time for "Senators' Statements" is limited to 15 minutes, unless extended in accordance with Rule 22. Rule 23(4) also provides that the time for taking a standing vote on a dilatory or procedural motion "shall not be considered part of the time provided for the Daily Routine of Proceedings," thus reducing the tactical advantage of such motions.

The Daily Routine of Business is set out in Rule 23(6). A number of changes have been made to the order of business from the old Rules. For instance, presentation of petitions, which used to be the first item, has been made the last one. Moreover, Rule 23(7) provides that:

> Not later than 30 minutes after the first item is called in accordance with section (6) above, regardless of the progress then made on the items listed therein, the Speaker shall interrupt any proceedings then before the Senate and shall forthwith call for ... Question Period.

The effect of this is that the Daily Routine of Business will take no longer than 30 minutes. The Speaker has no discretion, and must interrupt the proceedings, no matter how far they have progressed, and begin Question Period. This greatly reduces the opportunities for delay.

The House of Commons has time limits on various items in its Routine Proceedings. For instance, a 1991 amendment imposed a 15-minute limitation on the presentation of petitions. There is, however, no time limit in the House regarding the Routine Proceedings as a whole.

Question Period in the Senate is to last 30 minutes; this time limit is also an innovation. (The Rules regarding Oral Questions, found in renumbered Rules 24, 25 and 26, were unaffected by the 1991 changes.) At the conclusion of Question Period, the new Rules provide that the order of business is, in turn, Delayed Answers, Orders of the Day, Inquiries, and Motions.

SENATE BUSINESS

The new Rule 27 distinguishes and defines Government Business and Other Business, and lays out the order in which different matters will be dealt with by the Senate under Orders of the Day. The Rule is far more detailed than the old provision. It also establishes and clarifies priorities, thereby removing doubts and possible disagreements.

Rule 28(1) provides that, except as otherwise ordered by the Senate, or as provided elsewhere in the Rules, Government Business shall have priority over all other business before the Senate. The Rule goes on to provide that the government has the power to designate the order of consideration and the sequence in which Orders of the Day, listed under Government Business, will be called and considered. Under the old Senate practice, the Senate worked through the Order Paper. This could be inefficient, and resulted in deferral of many matters. It also meant that the government did not control the business of the chamber. This can be contrasted with the House of Commons, where the government has the right to determine the order in which matters are called pursuant to Standing Order 40(2), which has existed in one form or another since 1906.

Provision is also made for all Orders of the Day -- both government and other business -- to stand on the Order Paper for the next sitting unless disposed of (Rule 28(2)). This eliminates the need to have a motion to this effect moved prior to each sitting's adjournment. It accords with House of Commons practice, and with the reality of modern legislative agendas, in which there is always more business than can reasonably be handled in one sitting.

An item under "Other Business" that has not been proceeded with during 15 sittings is to be dropped from the Order Paper, pursuant to Rule 28(3). The intent of this provision is obviously to prevent items from cluttering up the Order Paper, or languishing on it for a long time. It applies, however, only to "Other Business," not to Government Business, and it is not entirely clear what "proceeded with" means.

TABLING OF DOCUMENTS

Rule 29 allows that documents tabled with the Clerk of the Senate shall be deemed to have been presented or laid before the Senate. All items so tabled will be listed in the daily *Minutes of Proceedings*. "Back door" tabling through the Clerk has advantages: it obviates the need for orally presenting and listing all documents, and thereby taking up time in the Chamber; it also ensures that documents can be tabled even when the Senate is not sitting. There could be a temptation to table embarrassing or politically difficult documents this way in the hope that they would escape public scrutiny, or at least that public knowledge of them could be delayed until the *Minutes of Proceedings* had been published.

The Leader of the Government or Deputy Leader of the Government in the Senate is entitled to lay upon the Table "other papers dealing with the administrative responsibilities of the government" under Rule 29(3). It is not clear exactly what kinds of documents are envisaged here, or how frequently they will appear. Other Senators may, with leave of the Senate, table "any paper relating to business before the Senate" under Rule 29(4).

RECOGNITION OF SENATORS

Previously, Rule 26 dealt with the situation where two or more Senators rose to speak at the same time. This provision has been re-worded in the new Rule 34: the Speaker is to call upon the Senator who, in the Speaker's opinion, first rose. A third Senator, however, may rise immediately on a point of order and propose a motion that another Senator "be now heard" or "do now speak." Rule 34(2) specifies (unlike the former wording) that such a motion is to be "put forthwith without debate or amendment." Any standing vote requested, however, could be subject to a 60-minute bell.

The Rule goes on to set out in sub-clauses (3) and (4) the effect of the adoption or rejection of a motion that a Senator "be now

heard" or "do now speak." These provisions are new, and help to clarify and define the rights of the Senators involved.

RULES OF DEBATE

A new Rule has been added that not more than one Senator shall have the floor at any one time, although a Senator may yield the floor to another Senator. This is a codification of the Senate practice of yielding the floor. Rule 35 goes on to set out the mechanism for yielding the floor, and the effect of doing so: the Senators involved are considered to have spoken once in the debate and cannot speak again (pursuant to Rule 38(1), unless they obtain the leave of the Senate. This would not apply if a Senator yielded to another Senator for a question, although the question and response would be considered part of the Senator's time for that debate.

With the introduction of new time limits on speaking, as discussed below, it is likely that Senators will not yield the floor as often as in the past. When a Senator yields to another Senator, the latter uses up his or her right to speak in the debate. Moreover, when the floor is yielded or questions taken, allotted time will be consumed.

SPEECH LIMITS

The Rules regarding the right to speak, speaking only once on any question, right of final reply, right of the mover or seconder to speak, and prohibition of debate on an oral question have not been amended. New provisions have been added, however. Rule 38(1) replaces the old Rule 28 to the effect that "No Senator shall speak more than once."

The provision that allows a Senator to speak again, in the event that a "material part" of his or her speech has been misunderstood, has been altered by restricting such an explanation to five minutes, and by limiting a Senator to only one such intervention. More significantly, such an explanation may only be made with the leave of the Senate.

Rules 38(2) and (3) provide that the Leader of the Government and the Leader of the Opposition shall each be entitled to unlimited time for debate, and the sponsor of a bill and the first Senator speaking immediately thereafter shall have 45 minutes. All other Senators shall be limited to 15 minutes, including questions and comments. The Clerk shall record the time, and shall advise the Speaker when the time limit has expired, and the Speaker shall enforce the limits.

The introduction of these time limits for speeches in the Senate is controversial. At the time of Confederation, there were virtually no time limits on speeches in Parliament. The House of Commons introduced time limits in 1927, and has revised -- and generally shortened -- them from time to time. At present in the House of Commons, different time limits are imposed for different types of debates or business. This ensures that the more important ones are recognized, while more routine proceedings are handled expeditiously. The House also distinguishes between the speech itself (usually limited to 20 minutes) and a period for questions or comments (limited to 10 minutes). The House of Commons has also adopted provisions whereby the length of speeches is shorter after debate has lasted for a certain period of time, such as five hours.

Until the enactment of this new Rule, there were no time limits on speeches in the Senate. The new limits represent, therefore, a major departure from previous practice. Time limits in and of themselves are not a bad thing: they can make a legislature more efficient, and require legislators to be more succinct and relevant. A legislature is a forum for discussion, however, and it is important that sufficient time be allowed to permit a full and sufficient discussion and debate. This requires a balancing of the competing interests of government and opposition legislators.

ALLOCATION OF TIME

Rules 39 and 40 introduce the concept of time allocation in the Senate. Rule 39 provides that if there is an agreement among the representatives of the parties in the Senate to allot a specified number of

days or hours to the proceedings at one or more stages of any item of government business, it may be announced in the Senate, and a motion setting forth the terms of any such agreement may be moved, without notice, and shall be voted on without debate or amendment. (A standing vote with a 60-minute bell could be requested.)

Rule 40 provides for the situation where there is no agreement among the parties in the Senate: the Leader or Deputy Leader of the Government may give notice, at any time when the Senate is sitting, of the terms of a motion to allocate a specified number of days or hours on any stage of consideration of any adjourned debate on any item of government business, and this motion will be placed on the Orders of the Day under "Government Motions" for the next sitting day (Rule 27(1)(d)). Rule 40(2) sets out certain minimum provisions that such a time allocation motion must include: six hours of debate on any substantive motion, six hours on a motion for second reading, one calendar day for committee consideration of a bill, a single period of six hours for report stage and third reading. No time allocation motion moved pursuant to Rule 40(2) shall allocate time to more than one stage of consideration of any item of Government Business (unlike Rule 39).

Pursuant to Rule 40(4), any debate that is the subject of a time allocation order shall be subject to the standing vote provisions of Rules 67 and 68, providing for a 60-minute bell on motions and votes. Votes shall be held as provided in Rules 40(4)(a) and (b): if the debate continues past 5:30 p.m., the vote will be deferred to 5:30 the next afternoon, and if the debate concludes prior to 5:30 p.m., the vote shall be deferred until 5:30 p.m. the same day.

During consideration of an Order of the Day that is the subject of a time allocation order, the Senate will not adjourn at the ordinary hour of adjournment, but rather will continue to sit until the time allocated has expired, pursuant to Rule 40(5), and the daily hour of adjournment will be postponed accordingly. At the conclusion of the time allocated, the Speaker shall deem a motion to adjourn to have been made and adopted. It is also provided that the dinner hour adjournment can be interrupted to enable a time-allocated debate to conclude, including the

putting of the question and any standing vote (Rule 40(5)(c)). The Rules also deal with the interruption of a time allocated debate in order to allow a deferred standing vote, a question of privilege or an emergency debate; the Senate would resume consideration of the Order of the Day to which time has been allocated. Rule 40(7) provides that during a debate that has been time-allocated, no motion to adjourn, no amendment, or any other motions (except that a certain Senator now be heard or do now speak) can be moved; in other words, no dilatory motions can be moved to interrupt or delay the debate. A similar provision is made for dilatory motions during debate over the motion to allocate time (Rule 41(1)).

According to Rule 41(1), the debate on a motion to allocate time is limited to two and a half hours, at the conclusion of which the question and vote will be put by the Speaker. No such vote may be deferred. Rule 41(2) sets out certain rules regarding the debate on the motion: no Senator shall speak more than once, the Leader of the Government and the Leader of the Opposition may not speak longer than 30 minutes, and all other Senators are limited to 10 minutes.

The introduction of a time allocation procedure in the Senate is a departure from previous practice. Hitherto, the Senate has operated without any specific rules regarding time allocation or closure. Complete freedom of debate may be the ideal, but it can be less than efficient, and can be easily abused. Some restraints need to be exercised, or accommodation reached, in order for a legislative chamber to conduct its business within a reasonable time frame.

In the British House of Commons, closure was first used by the Speaker on his own initiative in 1881 to cut off a debate during which Irish nationalists had engaged in extensive delaying tactics. The procedure was subsequently adopted by the House, and embodied in the Standing Orders. In the Canadian House of Commons, rules for closure were introduced in 1913 during consideration of the Naval Aid bill. The introduction of closure was the subject of a lengthy debate in the House at that time, and closure was used very sparingly in subsequent years. On the rare occasions when it was employed, such as during the infamous Pipeline Debate of 1956, the government was subject to harsh criticism.

Partly because closure was perceived as such a drastic remedy, the Canadian House of Commons explored the possibility of some other mechanism in the early 1960s. It was recognized that the amount and complexity of House business was increasing and that measures were necessary to ensure that this business would be expedited within a reasonable period of time. A provisional Standing Order was finally adopted in 1965 after considerable debate, and in 1969 a new Standing Order was approved. The time allocation provisions for the House are currently found in Standing Order 78, which appears to have been the model for the new Senate Rules. In the House of Commons, three scenarios are set out: where there is all-party agreement, where there is agreement among the majority of the representatives of the parties, and where the government acts alone.

The rules regarding time allocation where there is agreement arguably reflect the practice that has developed in the Senate whereby the two major parties often agree on the amount of time to be devoted to certain proceedings. In this regard, Rule 39 merely formalizes the practice, and makes such agreements part of the official record and binding. Reference is made in the new Rule to "representatives of the parties in the Senate." The question arises as to whether this includes representatives of parties such as the Reform Party, which has a member in the Senate, and which is an officially recognized party under the *Canada Elections Act*. The House of Commons has similar wording, although it also uses the concept of a "recognized party," which is generally interpreted to mean the existence of 12 or more Members in the House. The procedure envisaged in Rule 39 does not allow or provide for input from independent Senators, of whom there are several at present, as there have often been, historically. Rule 39 does provide for a vote, so such Senators can express their views.

The provisions in Rule 40 are designed to deal with the situation where agreement cannot be achieved. They are intended to ensure that the government has an opportunity to expedite the business of the House, while protecting to some degree the rights and interests of the opposition Senators. Thus, the mechanism for allocating time is set out in detail, with certain precautions and conditions. Time must be allocated

separately for each stage of consideration of a bill. Certain minimum hours of debate are specified, although there is perhaps a danger that these will come to be regarded as the maximum, rather than the minimum. Debate on the motion to allocate time is limited to two and a half hours, and different time limits are imposed on speeches.

QUESTIONS OF PRIVILEGE

Rules 44 and 45 deal with questions of privilege. These new rules are far more detailed and extensive than the old ones.

Section 18 of the *Constitution Act, 1867* provides that the privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and its Members shall be such as are from time to time defined by Act of Parliament, but such privileges, immunities, and powers shall not exceed those at the passing of such Act held, enjoyed and exercised by the British House of Commons. Section 4 of the *Parliament of Canada Act,* in turn, provides that the privileges, immunities, and powers shall be those held, enjoyed, and exercised by the British House of Commons at the time of the passing of the *Constitution Act, 1867,* and at the time of passing of any Act of the Parliament of Canada defining such privileges, immunities, and powers. The purpose of the Rules of the Senate is to set out the procedure for raising questions and points of privilege.

Rule 44(1) states that it is the duty of every Senator to preserve the privileges of the Senate, and that the violation of the privileges of one Senator affects those of all Senators and the ability of the Senate to carry out its constitutional functions. Moreover, action to ensure such protection takes priority over every other matter before the Senate, but in order to be accorded such priority, the proposed question of privilege must meet certain tests. It must be raised at the earliest opportunity; it must be a matter directly concerning the privileges of the Senate, or any Senator; it must seek a genuine remedy which is within the Senate's power to provide and for which no other parliamentary remedy is reasonably available; and it must seek to correct a grave and serious breach.

Rule 44(1) appears to be a restatement of already existing practice and precedent. It is a far clearer enunciation of some of the principles involved than was the old Rule 33. It does not clearly distinguish, however, between privileges of the Senate and privileges of individual Senators. Also, it refers to the *Constitution Act, 1867,* whereas the Senate is given functions and responsibilities under other Constitution Acts, up to and including the *Constitution Act, 1982.*

As noted, a question of privilege must be raised at the earliest opportunity in order to have priority over all other matters before the Senate. Otherwise, Rule 44(2) provides that the Senator raising the matter may put it on notice, but the matter is not proceeded with under the terms of the Rule.

In addition, Rule 44(4) provides that at least three hours' written notice of a question of privilege shall be given to the Clerk, except in respect of a question of privilege to be raised on a Friday, for which notice must be given prior to 6:00 p.m. on Thursday. Following receipt of the notice, the Clerk shall arrange for a copy and translation to be delivered to each Senator's Ottawa office. Non-receipt shall not affect the validity of the notice or be a reason for delaying the consideration of the question of privilege.

Having given the requisite notice, a Senator shall be recognized during "Senators' Statements" for the purpose of giving oral notice of the question of privilege (Rules 44(7) and 22(3)). The Senator must given an indication that he or she is prepared to move a motion calling upon the Senate to take action or referring the matter to the Standing Committee on Privileges, Standing Rules and Orders for investigation.

The lengthy notice period for giving written notice is new, as is the requirement for giving oral notice. (It is not clear why the two procedures are being introduced, as they would appear to duplicate each other to a large extent.) The provision for copies of the notice to be delivered to each Senator is also new. All of these provisions are a recognition of the seriousness of questions of privilege, and presumably are intended to ensure that all Senators have advance notice so that they can

be present, and prepare their own arguments or rebuttals if necessary. In the House of Commons, Standing Order 48(2) requires only one hour's notice prior to raising the question in the House; moreover, if the question of privilege arises out of the proceedings in the Chamber during the course of a sitting, no advance written statement is required. It is unclear what would happen in a similar case in the Senate: on the one hand, the question is to be raised at the earliest possible opportunity, while, on the other hand, there are these notice requirements.

Rule 44(8) provides that the Senate will take up consideration of the question of privilege no later than 8:00 p.m. (12:00 p.m. on Fridays) or immediately after the Senate has completed consideration of the Orders of the Day for that sitting, whichever happens first. Questions of privilege will be considered in the order in which the notices were received by the Clerk (Rule 44(10)), and there will be a distinct debate on distinct questions of privilege (Rule 44(11)). The Speaker will regulate the debate, and he or she "shall determine when sufficient argument has been adduced to decide the matter." Pursuant to Rule 44(12), the Speaker determines whether a *prima facie* case of privilege has been made, and in making a ruling, the Speaker shall state the reasons, together with references to any rules or other written authorities relevant to the case. This is consistent with decisions of the Speaker of the Senate in relation to the consideration of a question of privilege, as well as consistent with the practices of the House of Commons.

When a *prima facie* case has been established (and the Speaker's ruling is, of course, subject to appeal to the full Senate), the Senator who raised the matter may move a motion calling upon the Senate either to take action on the matter, or to refer the matter to the Standing Committee on Privileges, Standing Rules and Orders for investigation and Report: Rule 45(1). Such a motion must be moved immediately after the Speaker's decision, and will be considered at 8:00 p.m. (12:00 p.m. on Fridays) or when Orders of the Day for that sitting have concluded, whichever comes first. No Senator may speak more than once, or for more than 15 minutes, on such a motion: there are no exceptions for the Leader of the Government or the Leader of the Opposition, the mover of the motion,

or any other Senator. A motion relating to a question of privilege can be adjourned pursuant to Rule 45(6). At the end of three hours of debate, the Speaker is directed by Rule 45(7) to interrupt and put forthwith and successively every question necessary to dispose of the motion without permitting any further debate or amendment; any standing vote requested in relation to any question shall be subject to the rules for deferred standing votes. If the order of the day had been completed when the Senate took up consideration of the motion, the Senate will be deemed to have adjourned (Rule 45(8)), and, if not, the Senate will continue with consideration of Orders of the Day for a period equal to the time taken for the debate on the motion (Rule 45(9)).

The limitation of debate on the motion that the Senate take action or to refer the matter to the Standing Committee on Privileges, Standing Rules and Orders is new and acts as a pre-determined time allocation. No such time limit is prescribed in the House of Commons.

ADJOURNMENT OF SENATE BUSINESS

Rule 50 replaces the old Rule 36(2), regarding the adjournment of Senate business. Rule 50(1) provides that a Senator can adjourn the debate on an item other than Government Business in his or her name. The adjournment can be to a specified day, or, if none is specified, to the next sitting day. Any item of Government Business may be adjourned to the next sitting day, in accordance with Rule 50(2). Government Business is dealt with in Rule 27, which allows the Leader of the Government or Deputy Leader to designate the order of consideration of the Orders of the Day under Government Business.

NOTICES

Rule 59 deals with motions that require one day's notice, while Rule 60 covers the situations where no notice is required. The changes from the old Rules appear to be relatively minor; most are

consequential on other changes, while several provide clearer wording than the old Rules. Rule 60(10) says that notice is not required for the raising of a question of privilege, although, as noted above, a procedure is set out in proposed Rule 39 for certain written and oral notices to be given.

EMERGENCY DEBATES

Two new Rules have been added which deal with emergency debates. Under Rule 61(1), any Senator can move that the Senate adjourn for the purpose of raising a matter of urgent public importance. Three hours' written notice must be given to the Clerk, or, in the case of a Friday, notice must be given by 6:00 p.m. on the preceding Thursday. A matter proposed for discussion must meet certain tests: it must relate to a genuine emergency, calling for urgent consideration by the Senate; it must not revive a discussion previously taken up in the same session pursuant to the Rule; it cannot raise any question which can only be debated on a distinct motion under notice; and it cannot raise matters which form, in substance, a question of privilege. These conditions are similar to those set out in House of Commons Standing Order 52(6).

The notice is to be translated and distributed by the Clerk to the offices of all Senators. When the Senate meets, instead of calling "Senators' Statements and Tributes," the Speaker shall recognize the Senators who gave notice, in the order in which they were received. A Senator will be given five minutes to give reasons as to why an emergency debate should be taken up on the matter. The Senator must explain how it concerns the administrative responsibilities of the government, or could come within the scope of ministerial action, and give reasons why the Senate will likely not have another opportunity to consider the matter within a reasonable period of time. Other Senators will then have an opportunity to discuss the matter; each Senator is limited to speaking for a maximum of five minutes, and the whole debate may not last longer than 15 minutes. The Speaker shall then make a decision as to whether the situation requires urgent consideration; this decision is appealable to the full Senate, and such a vote would be subject to the 60-minute bell. The time

taken for consideration of applications for emergency debates is outside the timetable of the Senate, and postpones the daily routine of business.

According to Rule 62, when leave is granted to move a motion to adjourn the Senate for the purpose of considering a matter of public urgency, the debate begins at 8:00 p.m. (12:00 p.m. on Fridays), or when the Senate has completed the consideration of Orders of the Day for that sitting, whichever comes first. The debate comes to an end at 11:59 p.m. (4:00 p.m. on Fridays). The motion to adjourn is deemed to have been adopted if the Senate has completed the Orders of the Day; otherwise, the motion is deemed to have been withdrawn, and the Senate resumes consideration of Orders of the Day. If Orders of the Day were interrupted by the emergency debate, a period of time equal to that taken for the debate will be added to the time for consideration of Orders of the Day. No substantive motions can be proposed during the course of an emergency debate. Speeches are limited to 15 minutes.

Most of the provisions in the proposed Rules are similar to those set out in the Standing Orders of the House of Commons regarding emergency debates. The present Standing Order 52 of the House traces its origins to 1906, when its precursor was first introduced, and to similar rules in the British House of Commons that were introduced in 1882.

Emergency debates are a means of dealing with topical and urgent issues. If Parliament is to be relevant, there needs to be some procedure for addressing issues of vital public concern. It used to be that emergency debates used up valuable legislative time, and disrupted the legislative agenda; since 1986 in the House of Commons, this has not been the case, as the debate takes place after the conclusion of the daily proceedings. In the Senate, the new Rules are not quite as straightforward, in that emergency debates can interrupt proceedings; however, it is also clear that the time spent on such debates will not detract from the time needed for the ordinary business of the Senate.

In the House of Commons, a great many requests are made for emergency debates, but very few are accepted by the Speaker. In the Senate, each request will be discussed and debated on the floor.

DEBATABLE MOTIONS

Rule 63, which is headed "Debatable Motions," is a new Rule. It lists all those motions that are debatable ("except as provided elsewhere in these rules"), and is apparently a compendium of the previous Rules of the Senate. Rule 63(1)(r) is a residuary clause making debatable those motions that provide

> for the adoption of any other motion appearing on the Orders of the Day or on the Order Paper or moved on Routine Business, as may be required for the observance of the proprieties of the Senate, the maintenance of its authority, the appointment or conduct of its officers, the management of its proceedings, the fixing of its sitting days or the times of its meetings or adjournments.

This is similar to House of Commons Standing Order 67(1)(p).

Rule 63(2) provides that all other motions shall be decided immediately upon being put to the Senate, without any debate or amendment. This is to the same effect as House of Commons Standing Order 67(2).

STANDING VOTES

A new Rule 67 has been added regarding standing votes: where a standing vote has been requested, it is provided by Rule 67(1) that the bells to call in the Senators shall be sounded for 60 minutes. This time limit is new: previously, there was no provision for a vote until the Whips had signified that they were ready. Under the amendments, the vote can be held at the end of 60 minutes, whether or not the Whips are in at that time. By the same token, all Senators are assured that they have 60 minutes to get to the chamber, and that no vote will be taken prior to the expiry of the 60 minutes. By comparison, the maximum bell in the House of Commons is 30 minutes.

In the case of a standing vote that has been deferred or ordered for a specific time, Rule 67(3) provides that the bells shall be sounded "for not more than 15 minutes." The Rule also states: "These

provisions shall apply, in particular, to the disposition of non-debatable motions and any motion for which a period of time has been allocated to the disposition of debate."

The 15-minute "reminder" bell is premised in part on Senators already having notice of when the vote will be held. This is certainly true in the case of deferred votes and time-allocated votes, but less obvious with respect to non-debatable motions. Even if Senators are aware of the time for a vote, 15 minutes may not always be sufficient to enable them to get to the chamber. By way of comparison, the House of Commons provides for 30-minute and 15-minute bells: 15 minutes in the case of deferred divisions, proceedings interrupted to put the question, and if a quorum is lacking, and 30 minutes in the case of debatable and non-debatable motions.

Rule 67(4) provides that the doors of the Senate shall not be locked during the taking of standing votes. Although Senators may enter the Chamber at any time, no Senator shall vote who was not in his or her place in the Senate when the Speaker began to put the question. This change is apparently intended to address the concern of Senators who want to be able to attend some of a series of votes, and to ensure that Senators would be free to come and go during the taking of a vote. The practice in the House of Commons is to lock the doors prior to the taking of a vote. Rule 67(5) provides that the doors of the galleries shall be locked during the taking of a vote, and that only Senators shall have access to the floor of the chamber.

DEFERRED VOTES

Rule 68(1) provides that after a standing vote has been requested on a debatable motion, either Whip may request that it be deferred to 5:30 p.m. on the next day the Senate sits (a calendar day, rather than a sitting day), or in the case that the Senate is sitting on a Friday, it may be further deferred until the next sitting day at the option of the Government Whip, and he or she can do so up until the time for the taking of the deferred vote. Rule 68(4) provides that only one deferred

standing vote is permitted in connection with a particular matter, and the bells will be rung only once. Deferral of votes in series and successive deferrals are prohibited.

Under the old Rules of the Senate, no provision was made for deferring recorded votes. The House of Commons has had provision for deferred votes since 1986, and this appears to have worked reasonably well. Recorded votes take up considerable time, interrupt the schedule of the Senate, and can be used as a delaying tactic. By scheduling votes for certain times, more Senators can plan to be present, there is more certainty in the routine of proceedings, and the use of votes for extraneous reasons is minimized.

PRE-STUDY OF BILLS

A new Rule 75 has been added regarding the pre-study of any bill that has been introduced in the House of Commons but not read a first time in the Senate. A special procedure is set out for such a motion to be moved by the Leader of the Government or the Deputy Leader of the Government -- other Senators would have to comply with the general procedure for referring a question to a named standing committee. It should be noted that Rule 75(1) provides that matters can be referred to a standing committee for pre-study, while Rule 75(2) refers to standing committees or special committees of the Senate.

Until 1985, the Senate had an informal policy whereby it subjected many bills to pre-study. Generally, this was a useful and productive procedure. It enabled the Senate to have more input into the legislative process by providing comments and amendments prior to the finalization of the bill in the Commons. It also meant that the Senate could handle bills more expeditiously when they were sent up from the Commons. Not all legislation lends itself to pre-study: generally, it would be the more complex or controversial bills that would benefit from such a procedure. In some cases, it is not feasible to undertake pre-study of a bill. Pre-study does not foreclose any options for the Senate, nor does it change the

legislative process in any way; it is merely a recognition of reality, and an attempt to expedite the process.

In the Canadian parliamentary system, the members of the government are primarily drawn from the House of Commons. While all legislation (except financial bills) can be introduced in either the House or the Senate, the practice has developed over recent years whereby virtually all legislation is tabled first in the Commons. In other bicameral legislatures, it is possible to have legislation dealt with by both chambers concurrently or in parallel, but this is not the case in Canada. As a result, the Senate is largely dependent upon the House, and must wait to debate a bill until it has been passed in the Commons. This means that planning can be difficult, and there can be a large surge of legislative activity in the last days of a session or before a long break. Pre-study goes some way towards addressing these inherent problems.

COMMITTEE OF THE WHOLE -- SPEECH LIMITS

A new Rule 85 establishes a 10-minute time limit for speeches in the Committee of the Whole, although Senators may continue to speak any number of times. It is also provided that any standing vote will be taken immediately without sounding the bells to call in the Senators. It is also clarified that the Chairman shall call to order any Senator speaking against the principle of the bill; there is a general prohibition against such arguments in the former Rule, but it was not clear how it was to be enforced or by whom.

STANDING COMMITTEE ON PRIVILEGES, STANDING RULES AND ORDERS

A new Standing Committee on Privileges, Standing Rules and Orders replaces the former Committee on Standing Rules and Orders. The Committee continues to have the power, on its own initiative, to propose amendments to the Rules for the consideration of the Senate. The new Committee will also exercise the function of the Senate sitting as a

Committee of Privilege, which was a Committee of the Whole under the old Rules. The Committee has the power, upon a reference from the Senate, to examine and, if required, report on any question of privilege, and to consider the orders and customs of the Senate and the privileges of Parliament. The Committee, however, would not be required to table a report on a question of privilege referred to it by the Senate.

The provisions in Rules 39 and 40 regarding questions of privilege are designed to clarify and streamline the procedures regarding privilege. It makes sense to have a committee rather than the full Senate investigate and review such matters. Not only is it desirable that certain Senators develop expertise in this area, but it is also easier for factual matters or other investigations and deliberations to be conducted by a small group rather than a Committee of the Whole. This is the approach of the British and Canadian Houses of Commons. As privilege is intimately linked to procedural questions, including the Rules, it is appropriate that the same committee be responsible for all these matters.

As noted above, when the Speaker has determined that a *prima facie* question of privilege exists, the Senator who raised the matter has the option under Rule 40(1) to move a motion calling upon the Senate either to refer the matter to the Standing Committee or to take action on the matter. If the latter option is chosen, therefore, it is possible that the Standing Committee will not be involved.

IN CAMERA HEARINGS OF COMMITTEES

Under the old Rule 73, meetings of any committee of the Senate were open to the public, "unless the committee otherwise orders." The new Rule 93 provides that meetings of Senate standing and special committees shall be in public and only after public notice, unless certain matters are to be discussed, including salaries and benefits, contract negotiations, labour negotiations, personnel matters, draft agenda or reports. These rules, however, do not apply to sub-committees or to joint committees, unless they are engaged in clause-by-clause consideration of a bill.

Concerns have been expressed that too many meetings are held in camera. In one case, this practice resulted in a court challenge by the media. In a legislative body, it is preferable that as much business as possible be conducted openly. This is important not only in terms of accountability; as well, when meetings are held behind closed doors the public perception may be that something is being hidden.

The new Senate rule attempts to deal with this issue, and represents a major advance over anything that is in place in the House of Commons or in virtually all the provincial legislatures. The matters set out in Rule 93(2) are reasonable and based on municipal and other precedents. There are, however, other circumstances when it may be necessary or desirable to hear witnesses in private -- for instance, when public servants are testifying or when abused women or children are giving testimony. By the same token, certain inquiries undertaken by committees may involve national security issues that need to be treated confidentially.

It is also significant that this Rule requires that there must be public notice of meetings. This is important because clearly there is no virtue in having meetings open to the public if no one knows about them. It does give rise to questions, however. What constitutes "public" notice? How much notice is required or sufficient -- 5 minutes, 5 hours, 24 hours? What happens if no public notice is given? How does one deal with problems that arise and need to be dealt with immediately?

The exclusion of sub-committees is logical; many sub-committees deal with merely administrative matters, such as potential witnesses and the agenda, which should possibly be conducted privately. The exclusion, however, could provide a means of evading the intent of the Rule, as some sub-committees have more substantive powers and responsibilities.

ROYAL ASSENT

The new Rule 136 deals with a number of matters relating to Royal Assent and the attendance of the Sovereign or her representatives. The Rule provides that the time fixed by a royal message will be respected,

and cannot be delayed or interfered with. If any Senator or proceedings are interrupted in order for the Royal Assent or other procedure, there will be no loss of time, and the matters involved will be taken up at the conclusion. No motion to adjourn is possible if such a message has been received, and, if the Senate finishes its business early, the sitting shall be suspended and a 5-minute reminder bell rung. Similarly, any deferred vote will be delayed and will take place immediately following the royal procedure.

These provisions appear to be largely a reflection of the practice of the Senate, and, in any event, are dictated by the respect due to the Sovereign and her representatives. The new Rules are also designed to ensure that the rights of Senators are not adversely affected, and that the business of the Senate is not compromised by such proceedings. In December 1990, Liberal Senators and Members of Parliament delayed Royal Assent of the GST legislation; under the new Rules, such tactics will no longer be possible.

TRANSITION

A revised and renumbered edition of the Rules of the Senate, including the changes, will be prepared and printed by the Clerk of the Senate. The Clerk is authorized to make "any necessary editorial changes to the existing Rules."

CONCLUSION

The report of the Standing Senate Committee on Standing Rules and Orders concerning amendments to the Rules was approved by the Senate on 18 June 1991. In accordance with its terms, the new Rules came into force the next day, on 19 June 1991.

As this paper illustrates, the changes formed an extensive package of amendments, and modifications have been made to virtually every aspect of Senate procedure. Only time will tell how the amendments work,

and whether they are effective in achieving their objectives. Many Senators have concerns about certain aspects of the changes, and further adjustments may well be necessary.


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